

MEMORANDUM

TO: Honorable Chair and Members of the City of Tucson Planning Commission

RE: Proposed Draft Urban Agriculture Ordinance

FROM: Neighborhood Infill Coalition

DATE: July 9, 2015

As community advocates whose focus is codes, we have closely followed the crafting of Tucson's Urban Agriculture amendments to the zoning code. Early on, it occurred to us that the zoning code wasn't the best place to put urban agricultural requirements. Zoning codes traditionally concern themselves with the built environment, including the bulk, height, setback and lot coverage associated with structures. They seemed poorly suited to addressing the health, safety and welfare of both the animals and the residents.

As we continued to monitor the proposed amendments, we found an increasing number of errors. The proposed amendments contained numerous exemptions, some unintended, that rendered the code requirements meaningless. It also exposed some problems with our existing zoning code, most notably with the category of Crop Production. Among the examples that are listed as allowable uses under Crop Production are nurseries. While these are generally viewed as commercial enterprises, Crop Production is largely confined to residential zoning. There are a few exceptions in commercial zoning, but those are listed as secondary uses.

In essence, the city is attempting to build an urban agriculture code on a flawed foundation, and those flaws snowball as staff attempts to accommodate all of the requirements that the urban agricultural advocates demand.

After conducting extensive research, (see attached research links), we decided to approach the urban agricultural requirements from a different angle and craft an entirely separate Urban Agriculture Ordinance. The following tenets guided our efforts.

- 1.) An ordinance should be easily accessible and understandable. All of the requirements should be unambiguous and in one location.
- 2.) Since this ordinance is about food sustainability, any animal regulation included here should regard small farm animals as a source of food production for their entire life. Small farm animals are not pet. If the city chooses to allow its residents to acquire small farm animals as pets, it should amend the Animal section of the Tucson City Code.
- 3.) The most efficient way to fix something is to not break it in the first place. Writing a complex code that not even staff can adequately follow is a recipe for making mistakes.

Fixing mistakes is costly and time-consuming, and is something Tucson can't afford to keep doing.

4.) Codes should balance competing interests. A code should not be written in a way that demands a contribution from an adjoining neighbor, such as the chicken coop location did, nor should it place an undue burden on those in the community who do not wish to participate in the urban agriculture movement.

5.) Codes should be enforceable. If your ordinance doesn't creating a funding mechanism that will allow for additional inspectors, it needs simple requirements that are easy to understand, interpret and enforce.

The draft code we crafted is far from perfect, but it is designed to provide you with an alternative to the current staff proposal. It creates a new chapter for our City Code, called Urban Agriculture, and places it as a sub-chapter under Chapter 4, Animals. We relied heavily on the two model codes we found online. One of those model codes addresses small farm animals. It was written by an attorney who studied the regulations of 100 of our most populated municipalities and from that, crafted a model code. The other model code was created by The National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN). It includes suggested provisions that address the growing of crops. Together, these two model codes heavily influenced our draft. We also relied on codes from other communities, information from agricultural extension services, on-line informational articles, and how-to guides.

The rationale for our proposed code provisions is as follows.

Gardens: These were broken down into two categories. The first addresses home gardens and the second addresses community gardens. Staff's proposal does not address home gardens. However, we chose to do so, since a number of advocates have indicated a desire to garden in their front yards. We understand that staff arranged a tour of the Community Food Bank's garden. This particular garden is well-managed, but sadly, there are many gardens that do not look like this.

We have included a photo of a community garden which is located just north of the



University. As you can see, it has some maintenance issues, yet it is located across the street from residential property.

For this reason, we included some basic maintenance requirements for gardens which are located in the front

yard, so that the city's code enforcement division has some regulations that it can utilize to address gardens that been allowed to decline. It preserves the right of the property owner to utilize the front yard while protecting the adjoining property owners and the value of their properties.

Staff's proposal included language that permitted vertical gardens that might be installed on boundary walls. To ensure that someone did not utilize a wall that wasn't actually on their property, we limited the locations to those walls that do not separate adjoining properties.

We provided for greenhouses and hoophouses, but limited their size to prevent large, industrial-type structures from being erected in residential areas. We also limited them to passive greenhouses, since residential lots may not be large enough to protect adjoining property owners from the noise generated by mechanical greenhouses. Hoop houses were also permitted, and their size was limited as well. Since hoop houses tend to be constructed of PVC or pipe and covered with plastic or shade cloth, we included provisions that required torn material or damaged frames to be removed or replaced.

We modified the permitted sale of produce. Our current zoning code allows for limited home occupations, with limitations set on the number of customers who may access the property at any one time or on any given day. However, we recognize that produce is not like widgets. It ripens throughout its growing season and has a limited shelf life. This creates a problem; how can we allow a resident to sell their excess produce without actually running a business out of a residentially-zoned property? The solution we chose was to require the resident to sell to subscribers only. This eliminates the problem that the staff proposal would have created. That proposal was written in a manner that essentially allowed sales on a continual basis. It also permitted signage to be placed throughout a neighborhood. This has become a real problem for some of our more stressed neighborhoods, as signs proliferate and are often left up, including on telephone and light poles, which is clearly illegal. It also reduces the likelihood that an individual might set up a table at the end of their driveway and try to sell those widgets, along with some produce, and then claim that they were not in violation of the sales restrictions that are part of the Neighborhood Protection Ordinance.

Finally, we included language that encourages residents to conduct a soil test before actually growing food. This acknowledges that soil may be contaminated with lead, especially in some of our older neighborhoods where homes may still contain lead paint on their walls. This is not a code requirement; it is simply a helpful suggestion.

Our code proposal for community gardens tried to take into account the desire to include chickens, while protecting both the chickens and the vegetables that are grown in the garden. Any animal needs to be monitored and attended to on a daily basis. This is especially true in Tucson, where temperatures can reach over 100 degrees on a summer day. Chickens begin to suffer when the temperature inches toward 90 degrees, and they can quickly succumb to the heat if appropriate measures are not taken. We allowed

chickens only in those community gardens that actually have a paid staff person who is responsible for overseeing the care of the chickens.

All community gardens are required to have a set of operating rules in place to establish some structure to the running and maintenance of the garden. Any community garden located on public property or utilizing public funds is required to provide raised beds for persons with disabilities.

Household-sized mechanized equipment is permitted, but hours of operation are restricted. Large-scale equipment is only permitted during the initial preparation of the site.

There are rules that govern the location of sheds and other structures, limit the size of compost piles and the reuse of the composted material, and require waste products to be managed in an appropriate fashion. These requirements will help to ensure that the community garden continues to be a good neighbor.

Urban Farm: This is the most difficult of the criteria. While researching this, we realized that one cannot assume that an urban farm will be an organic farm. We also realized that urban farms need to be fairly substantial in size in order to generate sufficient income to remain viable. In essence, they potentially have all of the characteristics of a regular farm but compressed into a small size and located in an urban setting. For this reason, we followed the model code provisions and required an urban farm to produce a management plan. The criterion in that management plan is part of our proposed code.

We permitted the urban farm to have mechanical greenhouses, but we required a large setback if there were residences located nearby. We also permitted greenhouses and hoop houses to be larger in size. One consideration you may want to undertake is how to address environmental concerns, should the urban farmer decide to utilize the entire property for greenhouses. Greenhouses have their own unique issues with insects, and there are some EPA guidelines for containing pesticides in these environments.

Farmers Markets: These were permitted in a broad array of zones, including residential. To ensure that the quality of life for residents is not adversely impacted, farmers markets in residential zones are limited to churches, schools and non-profit locations. There are also limitations on days and hours of operation. We included much of the language from staff's proposed code as well. One addition is the requirement that all health department regulations must be complied with. It may be helpful to have a discussion with Pima County to determine what their rules and regulations are in this regard.

Composting: Composting is permitted in staff's proposal, and we have largely copied their requirements. One thing we noticed in other communities is that they limit the size of the compost pile. They also include language to prevent someone from attempting to turn their compost into a commercial operation without complying with commercial regulations. We have tried to create a mechanism that permits community volunteers to

continue to collect food waste that can then become part of a community garden's compost pile, but we have included provisions that restrict this activity to those community gardens that have a paid staff person who can oversee this. We have also allowed for the composting of chicken manure, provided it is mixed with straw or hay.

Small Farm Animals: This section took a great deal of research. Staff proposes to allow chickens, geese, ducks, turkeys and dwarf goats. However, our research shows that utilizing most of these species as food sources is problematic, especially when we are working with smaller pieces of property. Chickens will lay eggs for a certain period of time, but can easily live long past their egg-laying days. Geese are loud and aggressive and ducks require water, such as a small pond, to keep cool. This can lead to a mosquito problem if not monitored constantly. Turkeys are somewhat difficult to raise, and as larger birds, most residential lots could only reasonably accommodate one or two. In addition, they are prone to getting diseases that chickens are immune to, so it is recommended that they be raised in an area that is separate from the one used for chickens. Dwarf goats are too small to be used for meat, and must be constantly bred to ensure a steady supply of milk. Since they produce two to three kids each time, they quickly create a problem of finding appropriate homes for the excess goats. In the end, we determined that chickens and rabbits are the only viable sources of food in an urban setting.

We then looked at the regulations that other communities put in place. Staff proposed utilizing something called an Animal Unit to determine how many animals any property could accommodate. However, our research on animal units reveals that this measurement is actually utilized on an industrial scale and is used to determine the amount of pasture a herd of livestock needs or the amount of waste that a facility will generate. It is poorly suited to an application for determining the number of animals permitted in someone's backyard, especially when it does not factor in the lot coverage of the existing structures.

Most communities set a fixed number, usually based on the square footage of the lot. We created a four-tier system that allowed for increases in the number of chickens as the lot size increased. We also included a process that makes it possible to increase those numbers beyond what is permitted. However, unlike the staff proposal, we followed the model code and required the owner to apply for a permit. This allows for closer monitoring, provides mechanism to address problems, and rewards good stewardship by extending the permit past one year. All of this makes it easier to determine if the number of allowable animals has been exceeded. It also allows the community to set reasonable requirements for the housing and space requirements that are conducive to a healthy flock. We required the owner to provide a minimum amount of space per chicken, and we specified that the coop and run should provide secure protection from predators.

We required a ten-foot setback for chicken coops and runs, and our reasons are twofold. First, the staff proposal was written in a manner that effectively forced the adjoining property owner to "loan" the setback requirement to the chicken owner, since that setback came from the adjoining property. Second, given the high heat in this region, air

circulation is critical for the health of the birds. Having a coop penned in by two walls limits the amount of air that can circulate around the coop. Some chicken owners resort to throwing a blanket over the top of their coop and wetting it down on hot summer days. This did not strike us as an appropriate view to subject adjoining property owners to.

We included other provisions that are designed to ensure that waste, noise and odors do not become a problem for adjoining neighbors.

Rabbits were the other species that appeared to be viable as a food source. Their space and housing requirements are different from that of chickens. Rabbits reproduce at an astonishing rate, and two does and one buck can produce up to 180 pounds of meat per year; more if they happen to be a large variety of rabbit. In a single year, two does can birth up to 50 rabbits, and those rabbits can become roasters of three pounds in as little as a few months. They require larger hutch space and need some room for exercise. In addition, they are more susceptible to heat-related death, so they need to be raised in an enclosed, cooled building.

Butchering: This is an area that was not addressed in staff's proposed code language. However, if we are going to treat small farm animals as a food source, then we must accept the fact that butchering will occur. While it may be possible to find a local service that will butcher an animal for you, our research indicates that finding someone to butcher rabbits is extremely difficult.

We looked at the statutory regulations that govern butchering but found that they contain very little that actually addresses urban agriculture. That means this needs some additional research. While state statutes require the humane butchering of animals for one's own consumption, there is little else that addresses the proper disposal of the animal parts or blood.

Our proposal prohibits the outdoor butchering of animals. We suggest that this subject be researched further and appropriate regulations be added to the code to ensure that the meat is not contaminated nor the adjoining property owners



subjected to the smell of rotting body parts or the flies that this can attract.

Abandonment of Urban Farm: This was another area that staff did not address. We found this in one of the codes, and it raises the issue of what happens when either an urban farm or a community garden has been abandoned. The soil has been disturbed, chemicals and pesticides may be present, and structures may have been left to rot. All of these become problems that a community ultimately has to address. We have used the code requirements from other communities to try and address some of these issues.

Not addressed: There are several areas that neither we, nor staff, chose to address. This includes bees and aquaponics. Staff included a definition of aquaponics in their draft, but there were no regulations to go along with it. Aquaponics can be a backyard operation or it can be a full-scale commercial enterprise where fish are grown to be sold to local restaurants.

Bees are another area that many communities have created extensive regulations for. We know there are some residents who keep bees in their yards and sell the honey. We don't know how much of this occurs or if regulations are needed at this time. You may wish to look at what other communities have done before making a decision.

Conclusion: We attempted to stick to the guidelines we set for ourselves. We crafted a code that is easy to access and understand; it creates fair requirements while protecting those residents who have no desire to participate in urban agriculture; it makes enforcement somewhat easier by reducing ambiguity. Unlike many communities, it permits most activities by right and it sets reasonable permit requirements for those who wish to exceed some of the code requirements.

Thank you for giving our documents your careful consideration. We hope this alternative will provide more clarity on this important subject.